

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

	)	
In the Matter of	)	
	)	
Union Electric Company	)	Docket No. 52-037
dba AmerenUE	)	
	)	
(Callaway Plant Unit 2)	)	
	)	

**PETITION TO INTERVENE IN DOCKET NO. 52-037,  
AMERENUE CALLAWAY 2 NUCLEAR POWER PLANT  
COMBINED CONSTRUCTION AND LICENSE APPLICATION**

Pursuant to the notice of hearing published by the U.S. Nuclear Regulatory Commission on February 4, 2009, at 74 Fed. Reg. 6064, the Missouri Office of the Public Counsel ("Public Counsel") hereby timely petitions to intervene in the Combined Construction and License Application ("COLA") filed by AmerenUE for the proposed Callaway Plant Unit 2 ("Callaway 2") nuclear reactor, Docket Number 52-037. I petition to intervene on behalf of Public Counsel, the members of the public which Public Counsel represents, and Public Counsel staff in the area that could be affected by this nuclear reactor.

**Description of petitioner and explanation of petitioner's standing**

Public Counsel is a state agency, created by and operating pursuant to the laws of Missouri (Section 386.700 *et. seq.* RSMo 2000). Public Counsel has statutory authority to represent the public in matters concerning public utilities such as AmerenUE, and is the only state agency with statutory authority to represent the public in public utility matters. Public Counsel is the type of entity generally known as a "state utility consumer advocate." Public

Counsel's offices are located in Jefferson City, Missouri (approximately 30 miles from the proposed Callaway 2 site), and has a staff of twelve, including lawyers, accountants and economists.

Public Counsel has standing in its own right to bring this petition, because its offices are located within about 30 miles of the site of the proposed nuclear power plant. *Warth v. Seldin*, 422 U.S. 490, 511 (1975) ("There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.") An accident at the proposed nuclear power plant could result in radiological releases and environmental contamination that would adversely affect the health of Public Counsel staff and members of the public whose interest Public Counsel represents. The undersigned is an attorney-at-law, is the director of the Office of the Public Counsel, and resides and works within approximately 30 miles of the proposed site for Callaway 2. Public Counsel has organizational standing. Public Counsel also has representational standing to represent its staff, and because of its unique role as the official state utility consumer advocate, Public Counsel has representational standing to represent the members of the public in Missouri that may be affected by the NRC's decision in this matter. Public Counsel seeks to avoid or minimize health and safety risks by ensuring that all safety and environmental concerns are fully addressed in the NRC's licensing proceeding for the proposed Callaway 2 plant. Public Counsel also seeks to ensure that the NRC adequately investigates the viability of AmerenUE's plans for financing the Callaway 2 plant. A financial plan that is poorly conceived or inadequate can lead to problems during construction and operation of the plant, which can in turn lead to health and safety concerns.

#### **Intervention under 10 CFR 2.309(e)**

10 CFR 2.309(e) provides a mechanism for interested and potentially affected entities to intervene, at the Commission's discretion, when at least one requestor has established standing and at

least one admissible contention has been admitted. Public Counsel believes that other entities will raise proper contentions such that these conditions will be satisfied, and discretionary intervention will be available.

Public Counsel and its staff have expertise in the regulations and statutes governing utility regulation and project financing in Missouri, and as such will be able to assist in developing a sound record. AmerenUE would have the NRC approve the application on the assumption that Missouri laws will change (specifically with respect to the authority of the Missouri Public Service Commission to allow charges for plant under construction before that plant is fully operational and used for service). While such changes are certainly possible, it is also possible that the financing scheme on which AmerenUE depends, and which is now unquestionably unlawful in Missouri, will remain unlawful. Public Counsel can provide important information about utility financing and utility regulation from a unique perspective.

As the only Missouri state entity lawfully charged with representing the public in utility matters, and as an agency whose offices are located only a short distance from the proposed site, Public Counsel has a significant interest in the proceeding. Public Counsel has no means, other than participation in this matter, in which it can adequately protect these interests. The Commission's decision in this matter could have a profound effect on Public Counsel and the members of the public which Public Counsel represents. Although it is unknown at this point what entities will ultimately be parties to the proceeding, given Public Counsel's unique status as Missouri's official utility consumer advocate, it does not appear that any other party will represent Public Counsel's interests. Public Counsel's participation will not inappropriately broaden the issues or delay the proceeding.

To be clear, Public Counsel is not necessarily opposed to the granting of AmerenUE's application in this proceeding, but Public Counsel believes that there may be issues specific to Missouri and the regulation of utilities in Missouri that the Commission must consider. It is critical

that the Commission have a balanced perspective on those issues, and only Public Counsel can give the perspective of the public in Missouri.

Respectfully submitted,

This 6th day of April 2009

\_\_\_\_\_Signed Electronically by\_\_\_\_\_

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